

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

MAR 12 2009

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

THOMAS GALLETTY,

Appellant.

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) 2 CA-CR 2007-0395  
)  
) DEPARTMENT B  
)  
)

MEMORANDUM DECISION

) Not for Publication  
)  
) Rule 111, Rules of  
)  
) the Supreme Court  
)  
)

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200200834

Honorable Monica Stauffer, Judge

APPEAL DISMISSED

Terry Goddard, Arizona Attorney General  
By Kent E. Cattani and Diane Leigh Hunt

Tucson  
Attorneys for Appellee

Harriette P. Levitt

Tucson  
Attorney for Appellant

B R A M M E R, Judge.

¶1 Appellant Thomas Galletly appeals his convictions for attempted fraudulent scheme or artifice, filing a false instrument, and forgery. He argues he was denied his constitutional rights to both due process and counsel. We dismiss the appeal.

### **Factual and Procedural Background**

¶2 On appeal, we view the facts in the light most favorable to sustaining Galletly's convictions, *see State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008), but relate only those facts relevant to our disposition of his appeal. Galletly attempted to purchase a truck from an automobile dealership by presenting as payment a document described as a "bill of exchange." After the dealership refused to accept the document as payment, Galletly filed a lien against the dealership owner's property, stating the dealership had agreed to pay approximately \$160,000 in compensatory and punitive damages.

¶3 A grand jury charged Galletly with attempted fraudulent scheme or artifice, filing a false instrument, and forgery. Although Galletly initially pled guilty to fraudulent scheme or artifice and was placed on five years' probation, the trial court granted his petition for post-conviction relief seeking to withdraw from that agreement and proceed to trial on the original charges. Before trial, Galletly's counsel moved to withdraw. Galletly did not appear at the hearing on that motion. The court granted the motion to withdraw and issued a bench warrant for Galletly. The court then appointed new defense counsel.

¶4 Approximately two months later, defense counsel requested permission to withdraw, asserting he had been unable to contact Galletly since being appointed and stating that, if trial were held in absentia, he would be unable to represent Galletly effectively. The

court denied the motion and proceeded with a jury trial in absentia. At the beginning of trial, the court denied defense counsel's motion to continue the trial and renewed motion to withdraw.

¶5 After a one-day trial in October 2006, the jury found Galletly guilty of all counts. The bench warrant for his arrest was served in August 2007, and Galletly was sentenced in October. The trial court suspended imposition of sentence and placed him on concurrent, three-year terms of supervised probation for each conviction. This appeal followed.

### **Discussion**

¶6 In his sole argument on appeal, Galletly asserts he was denied his constitutional rights to due process and to counsel under the United States and Arizona Constitutions because his defense counsel failed to make an opening statement, effectively cross-examine witnesses, or make proper objections. The state responds that these claims are properly brought only under Rule 32, Ariz. R. Crim. P., and are thus not cognizable claims on appeal. We agree.

¶7 Our supreme court made clear in *State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002), “that ineffective assistance of counsel claims are to be brought in Rule 32 proceedings.” Thus, “[a]ny such claims improvidently raised in a direct appeal, henceforth, will not be addressed by appellate courts regardless of merit.” *Id.* The court noted the practice of raising ineffective assistance claims on direct appeal had proved “problematic” and did not “always yield consistent results.” *Id.* ¶ 7. We are not at liberty to depart from

the rule *Spreitz* announced. *See State v. Foster*, 199 Ariz. 39, n.1, 13 P.3d 781, 783 n.1 (App. 2000).

¶8 Galletly asserts his appellate claim is not subject to *Spreitz*, instead characterizing his claim as one for “the absolute denial of the right to counsel.”<sup>1</sup> An ineffective assistance of counsel claim is grounded, of course, in the same constitutional provisions Galletly relies on here. *See Strickland v. Washington*, 466 U.S. 668, 684-85 (1984) (right to counsel protects due process right to fair trial); *see also State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985) (right to counsel is requirement of due process). The crux of Galletly’s argument is plainly that he was denied effective assistance of counsel. He cites no authority, and we find none, suggesting an appellant may circumvent *Spreitz* merely by characterizing an ineffective assistance claim as something else.

### **Disposition**

¶9 For the reasons stated, we dismiss Galletly’s appeal. Galletly, of course, is not precluded from raising his ineffective assistance of counsel claim in an appropriate petition for post-conviction relief. *See Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d at 527.

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J. WILLIAM BRAMMER, JR., Judge

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<sup>1</sup>Although Galletly discusses the trial court’s refusal to grant defense counsel’s motion to withdraw and motion to continue “in order to establish prejudice,” Galletly does not argue they are independent grounds for relief. Accordingly, we do not address them. *See State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989); Ariz. R. Crim. P. 31.13(c)(1)(vi).

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge